REMARKS

Claims 1-30, 32-33, and 35-39 are pending. Claims 1, 10, 17, 21, 27, 32, 33, 36, and 38 are independent.

In the action mailed July 24, 2006, claims 38-40 were rejected under 35 U.S.C. § 101, first paragraph as allegedly being directed to non-statutory subject matter. Although applicant disagrees with the basis of the rejection, to advance prosecution, claim 40 has been canceled and claim 38 has been amended to recite "[m]achine logic tangibly embodied in hardware," as supported, e.g., by page 12, line 5.

Accordingly, applicant submits that the rejection of claim 40 is moot and requests that the rejections of claims 38-39 be withdrawn.

Claim 1

Claim 1 was rejected under 35 U.S.C. § 102(e) as anticipated by U.S. Patent Publication No. 2002/0186660 to Bahadiroglu (hereinafter "Bahadiroglu").

Claim 1 relates to a method that includes sending a data packet along a path from a first network point to a second network point, along the path, generating fragment packets from the data packet, analyzing the size of at least one of the fragment packets relative to a maximum packet size, and

depending on a result of the analysis, re-setting the maximum packet size based on the size of the at least one of the fragment packets.

Applicant respectfully disagrees with the rejection and submits that Bahadiroglu neither describes nor suggests analysis of the size of at least one fragment packet and re-setting the maximum packet size based on this size, as recited in claim 1.

In this regard, Bahadiroglu describes a system in which measurements of the latency and jitter of packet transmission (i.e., the "current network conditions") between a sending node and a receiving node are periodically determined and used to determine an optimum packet size and an optimum inter-packet interval. *See Bahadiroglu*, para. [0048]. According to Bahadiroglu, the "latency" of a network includes the inherent delays through the elements of the network. *See Bahadiroglu*, para. [0010]. "Jitter" is the change in network latency as a function of time. *See Bahadiroglu*, para. [0010].

Applicant respectfully submits that Bahadiroglu's measurements of latency and jitter neither describe nor suggest analysis of the size of at least one fragment packet. In particular, latency and jitter both relate to time used to transmit a packet rather than the size of a fragment packet.

Please note that Bahadiroglu also distinguishes between latency/jitter and size. For example, Bahadiroglu describes that his technology can determine the latency and jitter of packet transmission for packets of a known size. *See, e.g.,* *Bahadiroglu*, para. [0049]. It is therefore clear that latency/jitter are sufficiently independent of size that Bahadiroglu can still gleam sufficient information from packets of a known size.

Accordingly, claim 1 is not anticipated by Bahadiroglu. Applicant thus requests that the rejections of claim 1 and the claims dependent therefrom be withdrawn.

Claim 10

Claim 10 was rejected under 35 U.S.C. § 102(e) as anticipated by Bahadiroglu.

Claim 10 relates to a method that includes determining, at a receiving point, a size of a data packet transmitted over a network path from a sending point to the receiving point and resetting a maximum data packet size of the network path from the sending point to the receiving point based on the determined size of the data packet transmitted over the network path.

Bahadiroglu neither describes nor suggests that the size of a data packet transmitted over a network path is determined at a receiving point or that the maximum data packet size of the network path is reset based on the determined size, as recited in claim 10.

In this regard, as discussed above, Bahadiroglu's system measures of the latency and jitter of packet transmission to determine an optimum packet size. Bahadiroglu's latency and jitter are sufficiently independent of size that Bahadiroglu's system can operate with packets of a known size.

Accordingly, Bahadiroglu's measurements of latency and jitter neither describe nor suggest that the size of a data packet transmitted over a network path is determined at a receiving point or that the maximum data packet size of the network path is reset based on the determined size, as recited in claim 10. Claim 10 is thus not anticipated by Bahadiroglu. Applicant thus requests that the rejections of claim 10 and the claims dependent therefrom be withdrawn.

Claim 17

Claim 17 was rejected under 35 U.S.C. § 102(e) as anticipated by Bahadiroglu.

Claim 17 relates to a method that includes sending a data message along a network path from a sending point to a receiving point, determining the size of at least a fragment of the data message at the receiving point, and based on the determination, adjusting a maximum packet size between sending and receiving points.

Bahadiroglu neither describes nor suggests determining the size of at least a fragment of a data message, and based on the determination, adjusting a maximum packet size, as recited in claim 17.

In this regard, as discussed above, Bahadiroglu's system measures of the latency and jitter of packet transmission to determine an optimum packet size. Bahadiroglu's latency and jitter are sufficiently independent of size that Bahadiroglu's system can operate with packets of a known size.

Accordingly, Bahadiroglu's measurements of latency and jitter neither describe nor suggest determining the size of at least a fragment of a data message, and based on the determination, adjusting a maximum packet size, as recited in claim 17. Claim 17 is thus not anticipated by Bahadiroglu.

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Applicant thus requests that the rejections of claim 17 and the claims dependent therefrom be withdrawn.

Claim 21

Claim 21 was rejected under 35 U.S.C. § 102(e) as anticipated by Bahadiroglu.

Claim 21 relates to a method for determining a maximum packet size of a network path. The method includes sending a data packet along the network path to a receiving node, receiving a response from the receiving node, and setting the maximum packet size of the network path based on the response. The response from the receiving node includes information determined based on a size of a fragment of the data packet. The fragment was formed along the network path.

Bahadiroglu neither describes nor suggests receiving a response from a receiving node that includes information determined based on a size of a fragment of the data packet, as recited in claim 21.

In this regard, as discussed above, Bahadiroglu's system measures of the latency and jitter of packet transmission to determine an optimum packet size. Bahadiroglu's latency and jitter are sufficiently independent of size that Bahadiroglu's system can operate with packets of a known size.

Accordingly, Bahadiroglu's measurements of latency and jitter neither describe nor suggest receiving a response from a receiving node that includes information determined based on a size of a fragment of the data packet, as recited in claim 21. Claim 21 is thus not anticipated by Bahadiroglu. Applicant thus requests that the rejections of claim 21 and the claims dependent therefrom be withdrawn.

Claim 27

Claim 27 was rejected under 35 U.S.C. § 102(e) as anticipated by Bahadiroglu.

Claim 27 relates to a method that includes sending a data packet on a path from a first network point to a second network point, along the path, generating fragment packets from the data packet, and analyzing a size of at least one of the fragment packets to determine a path maximum packet size.

Bahadiroglu neither describes nor suggests analyzing a size of at least one of the fragment packets to determine a path maximum packet size, as recited in claim 27.

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In this regard, as discussed above, Bahadiroglu's system measures of the latency and jitter of packet transmission to determine an optimum packet size. Bahadiroglu's latency and jitter are sufficiently independent of size that Bahadiroglu's system can operate with packets of a known size.

Accordingly, Bahadiroglu's measurements of latency and jitter neither describe nor suggest analyzing a size of at least one of the fragment packets to determine a path maximum packet size, as recited in claim 27. Claim 27 is thus not anticipated by Bahadiroglu. Applicant thus requests that the rejections of claim 27 and the claims dependent therefrom be withdrawn.

Claim 32

Claim 32 was rejected under 35 U.S.C. § 102(e) as anticipated by Bahadiroglu.

Claim 32 relates to a method that includes sending a data packet along a network path, fragmenting the packet into fragments, and analyzing the size of one or more of the fragments to determine the maximum packet size of the path. The data packet is larger than the maximum packet size of the network path.

Bahadiroglu neither describes nor suggests analyzing the size of one or more fragments to determine the maximum packet size of the path, as recited in claim 32.

In this regard, as discussed above, Bahadiroglu's system measures of the latency and jitter of packet transmission to determine an optimum packet size. Bahadiroglu's latency and jitter are sufficiently independent of size that Bahadiroglu's system can operate with packets of a known size.

Accordingly, Bahadiroglu's measurements of latency and jitter neither describe nor suggest analyzing the size of one or more fragments to determine the maximum packet size of the path, as recited in claim 32. Claim 32 is thus not anticipated by Bahadiroglu. Applicant thus requests that the rejections of claim 32 and the claims dependent therefrom be withdrawn.

Claim 33

Claim 33 was rejected under 35 U.S.C. § 102(e) as anticipated by Bahadiroglu.

Claim 33 relates to a method that includes sending a message along a network path, fragmenting the message into fragments, at a receiving point, measuring the size of the largest fragment, and communicating the size of the largest fragment to a sending point. The path includes sections, each having a maximum message size to limit the size of messages passing through it. The message is larger than the smallest maximum message size of the sections. The fragments are at least as small as the smallest maximum message size.

Bahadiroglu neither describes nor suggests measuring the size of a largest fragment of a message sent along a network path at a receiving point or communicating the measured size of the largest fragment to a sending point, as recited in claim 33.

In this regard, as discussed above, Bahadiroglu's system measures of the latency and jitter of packet transmission to determine an optimum packet size. Bahadiroglu's latency and jitter are sufficiently independent of size that Bahadiroglu's system can operate with packets of a known size.

Accordingly, Bahadiroglu's measurements of latency and jitter neither describe nor suggest measuring the size of a largest fragment of a message sent along a network path at a receiving point or communicating the measured size of the largest fragment to a sending point, as recited in claim 33.

Claim 33 is thus not anticipated by Bahadiroglu. Applicant thus requests that the rejections of claim 33 and the claims dependent therefrom be withdrawn.

Claims 36 and 38

Claims 36 and 38 were rejected under 35 U.S.C. § 102(e) as anticipated by Bahadiroglu.

Claim 36 relates to a computer program embodied in a computer readable medium. The program is capable of configuring a computer to send a data packet along a path from a first network point to a second network point, along the path, generate fragment packets from the data packet, analyze the size of at least one of the fragment packets, and depending on a result of the analysis, re-set a maximum packet size based on the size of the one of the fragment packets.

Claim 38 relates to machine logic tangibly embodied in hardware capable of performing operations. The operations are comparable to those performed in claim 36.

Bahadiroglu neither describes nor suggests analysis of a size of at least one fragment packet and re-set of a maximum packet size based on the size, as recited in claims 36 and 38.

In this regard, as discussed above, Bahadiroglu's system measures of the latency and jitter of packet transmission to determine an optimum packet size. Bahadiroglu's latency and
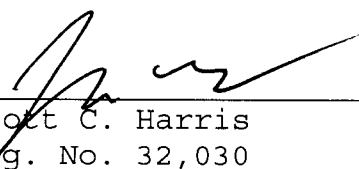
jitter are sufficiently independent of size that Bahadiroglu's system can operate with packets of a known size.

Accordingly, Bahadiroglu's measurements of latency and jitter neither describe nor suggest analysis of a size of at least one fragment packet and re-set of a maximum packet size based on the size, as recited in claims 36 and 38. Claims 36 and 38 are thus not anticipated by Bahadiroglu. Applicant therefore requests that the rejections of claims 36, 38, and the claims dependent therefrom be withdrawn.

Applicant asks that all claims be allowed. No fees are believed due at this time. Please apply any charges or credits to Deposit Account No. 06-1050.

Respectfully submitted,

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